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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No.

E. W. CLARK,
COMMISSIONER OF INSURANCE OF THE STATE OF IOWA, AS RECEIVER OF FEDERAL SURETY COMPANY, PETITIONER,

vs.

HARRY O. WILLIARD, W. W. WHEATON, AND C. W. HAY,
AS TRUSTEES OF GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON-LAW TRUST, AND GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON-LAW TRUST, RESPONDENTS.

SUMMARY
OF
PETITION AND BRIEF

This case has been previously considered here. See Clark v. Williard, 54 Sup. Ct. Rep. 615; 78 L. Ed. 743.

Petitioner asks that this Court again take jurisdiction and review the judgment (R. 21) of the Montana Supreme Court, handed down July 24, 1934, after remand from this Court. The grounds for such request are that the judgment fails to comply with the mandate of this Court and violates the faith and credit clause and the equal rights clause of the Constitution.

The controversy is whether Montana by policy expressed in statute or decision may refuse to recognize and give effect to the status of petitioner as charter liquidator of a dissolved Iowa corporation and the relationship prescribed by statutory

charter provisions between petitioner and the creditors of that defunct entity.

After petitioner became charter liquidator, respondents in Montana obtained a judgment by default against the dissolved corporation and levied execution.

The trial court held that the levy was ineffective. The Montana Supreme Court first upheld that levy on the ground that petitioner was a chancery receiver. This Court reviewed that decision and held that petitioner is a charter liquidator and that full faith and credit had not been given to the Iowa statutory charter provisions. After remand, the Montana court again upheld the levy. Review is sought of the latter judgment.

The latter judgment is grounded on the proposition that the recognition of the statutory charter provisions would be repugnant to Montana policy as to a dissolved corporation and its property.

The court says that Montana statutory policy will not permit appointment of a corporate receiver to prevent unequal distribution. Petitioner contends that that policy is immaterial. Petitioner is a liquidator. The Constitution compels recognition of that fact.

The court says Montana policy permits attachment against dissolved Montana corporations. Petitioner contends that that policy is immaterial. That policy could only prevail prior to the appointment of a receiver or liquidator. The liquidator in this case is in office and entitled to recognition.

The court says petitioner's title results from a statutory assignment and is not entitled to recognition by constitutional mandate because rights and remedies of property are governed by the laws of the state in which it is situate. Conceding that Montana law may determine the rights of a liquidator to property just as it might determine the rights of a surviving spouse to property, yet Montana may not deny that petitioner is a charter liquidator any more than it could deny that a surviving spouse from another state had been validly married under the law of the marital domicile.

In any event this same point was an alternative ground of the first decision. It should not be presumed that this Court

reversed the first decision merely for the purpose of permitting the Montana court on the second hearing to place the decision solely upon what had been an alternative ground of the first decision.

The opinion recognizes that a corporate receiver will be appointed in Montana in some cases. The judgment decides that a receiver will be protected against execution levies. The judgment also decides that petitioner's status does not entitle him to protection in Montana.

If Montana would not protect a charter liquidator with title, then it might be proper to assume (although we do not concede) that they could treat petitioner likewise. But they admittedly protect a Montana liquidator. They refuse to protect a liquidator from another state. In effect they say that in Montana petitioner is not a liquidator. Either they have withheld faith and credit or have indulged in a forbidden discrimination between a Montana liquidator and a liquidator appointed in another state.

The violation of the Constitution and mandate is not mitigated or avoided by the last conclusion of the opinion that the Iowa court would do likewise. If the Iowa court would so hold, it would be subject to review and correction. Nor is it clear that court would so hold. The Schloss case, decided by the Iowa court and relied on in the opinion, arose on demurrer. It does not appear that the constitutional questions were ever raised or considered. The Montana judgment and opinion either do or do not violate the mandate of this Court and the Constitution. A violation is no less a violation because some other court would be disposed to do likewise.

There are adequate grounds for review. Failure to comply with the mandate of this Court is ground for review. The constitutional questions are in the record. They were either specially set up in the trial court (R. 87) or result from an interpretation of Montana statutes the validity and constitutionality of which were considered and upheld.

PETITION

To The Honorable The Chief Justice and The Associate Justices of The Supreme Court of The United States:

Your petitioner respectfully represents as follows:

The facts appear in the several opinions. We considered omitting any extended statement of facts but concluded that the rules require such a statement, which now follows.

Petitioner, Commissioner of the Department of Insurance of the State of Iowa, was appointed statutory successor and charter liquidator of Federal Surety Company, an Iowa insurance corporation, by a decree (R. 45) and supplemental decree (R. 50) in a statutory proceeding in the courts of Iowa. Pertinent Iowa statutes are in the Appendix hereto and in the supplemental decree at R. 50.

When petitioner was appointed an action was pending in Fergus County, Montana, in which Federal Surety Company (not petitioner) was defendant, and in which, after petitioner was appointed, respondents obtained judgment by default against Federal Surety Company (not against petitioner). (R. 84). Execution was issued (R. 86). The levy complained of was made under that judgment in May, 1932, after petitioner's appointment. See affidavit at R. 68 in support of respondent's motion. These parties met in a third court—the District Court, Cascade County, Montana. After petitioner's appointment, but prior to the levy, that court upon petition of a simple contract creditor (Mieyr) had appointed a receiver (Crichton) of the Montana assets (R. 32). Thereafter respondents appeared in that proceeding and asked (R. 35) and obtained (R. 37) an order granting leave to levy execution under their judgment, subject, however, to the conditions enumerated at R. 36. The levy was made. Thereafter petitioner appeared in that same proceeding, set up his status and the Iowa statutes from which it was derived, and asked (R. 39 to 56) and obtained an order (R. 58 to 63) recognizing his status and his title, making provision assuring Montana residents of distribution ratably with all other creditors, confirming the appointment of Crichton as receiver, and revoking the leave theretofore granted to respondents to levy execution.

Respondents moved (R. 63 to 86) to set aside that order. Petitioner resisted that motion on the ground (R. 87) that to sustain the motion would be in violation of Sections 1 and 2, Article IV, of the United States Constitution. From an order (R. 89) overruling their motion respondents appealed to the Montana Supreme Court, which reversed the trial court and upheld the execution levy on the grounds (see first opinion, R. 92): (1) that it was error to appoint Crichton upon the petition of a simple contract creditor; (2) that the appointment of Crichton on petitioner's application was not made until after the levy; (3) that petitioner's appointment in Iowa was a chancery appointment, good only in the state where made; and (4) that even though petitioner did derive title from Iowa statutes, an involuntary assignment in aid of a statutory judicial proceeding will not be recognized in another state to the prejudice of its citizens. See first opinion (R. 92).

This Court reviewed that decision, vacated the Montana judgment insofar as it upheld the execution levy, and remanded the case. (Clark v. Williard, 78 L. Ed. 743; 54 Sup. Ct. Rep. 615.) This Court held that petitioner derived his status as charter liquidator with title from Iowa statutory charter provisions to which the Montana court had failed to give full faith and credit. In the opinion of this Court it is said:

> "In our judgment, the statutes of Iowa have made the official liquidator the successor to the corporation, and not a mere receiver * * * .
>
> "We think the Supreme Court of Montana denied full faith and credit to the statutes and judicial proceedings of Iowa in holding, as it did, that the petitioner was a receiver deriving title through a judicial proceeding, and not through the charter of its being * * * .
>
> "Whether there is in Montana a local policy, expressed in statute or decision, whereby judgments and attachments have a preference over the title of a charter liquidator, is a question as to which the Supreme Court of that state will speak with ultimate authority. It has not spoken yet."

This passage was evidently construed by the Montana court to mean that it might decide the policy of Montana as to for-

eign liquidators without reference to the status of domestic liquidators. It should be noted that that passage does not have such a meaning. The omission of the word "foreign" before the words charter liquidator is very significant and indicates that this Court intended that the Montana court decide the policy as to liquidators generally, both domestic and foreign, and deal with both in a similar manner.

The judgment entered by the Montana court appears at R. 21, in the following words:

> "This cause this day came on for judgment and decision. Whereupon, on consideration it is now here ordered and adjudged by this Court that the cause be, and it is hereby remanded to the district court of Cascade county with direction to modify the order of August 25, 1932, to the end that the lien of the appellants acquired by virtue of the levy of the execution is determined to be valid as against and prior to the claim of the respondent Clark, and of the receiver appointed by the district court; that the claim of the respondent Clark, and of the receiver so appointed, is superior to the claim of all persons attempting to assert a lien on the assets of the Federal Surety Company which was not perfected prior to August 3, 1932. The order of August 25, 1932, will when so modified, stand affirmed."

That judgment settles two issues: (1) Montana policy does recognize a Montana receiver or liquidator and protect him against executions. (2) Montana policy will not recognize or give effect to the status of a charter liquidator appointed in another state.

The Montana court has refused to recognize and give effect to the status and title of petitioner. They say in effect that in Montana petitioner is not a liquidator. Either they have withheld full faith and credit or have indulged in a forbidden discrimination between a Montana liquidator and a liquidator appointed in another state.

The same objections apply to the opinion; if not, then the opinion must be disregarded as contrary to the judgment. In its opinion the Montana court addresses itself to the question of policy. It says that the policy of Montana permits levies against a foreign liquidator. It derives that policy from Mon-

tana statutes. It interprets Section 6011, Revised Codes of Montana, 1921, to mean that under Section 9303, Id., a receiver may not be appointed for the sole purpose of preventing execution levies and enforcing ratable distribution. At the bottom of R. 9 the opinion states:

> "We therefore conclude that the courts of this state will not appoint a receiver to supplant the statutory trustees of a dissolved insolvent corporation upon the sole and only ground of preventing the unequal distribution of its assets."

and at the end of the second paragraph on R. 11 the opinion continues:

> "The legislature has by the all-inclusive attachment laws made them applicable to all persons and corporations (except banking corporations) alike, without regard to the solvency or insolvency of the attachment debtors. The legislature has spoken; it has declared the policy of the state, which is binding upon us."

The question is not on what grounds a liquidator will be appointed, nor whether levies are permitted against an insolvent corporation for which no liquidator has been appointed. Petitioner has been appointed and is in office. The opinion concedes, and the Montana statutes provide, that a receiver may be appointed in some cases. The judgment upholds and protects the appointment (after respondents' levy) of Crichton in this case. This Court has said Montana must recognize that petitioner is in office. Montana must treat petitioner as liquidator. It is immaterial what Montana would do about appointments or levies if petitioner were not in office.

The opinion then passes to the question, what faith and credit must be given to the statutes of Iowa from which petitioner's title and status are derived. The opinion states (R. 11):

> "Full faith and credit must be given to the decree of the Iowa court and the statutes of that state in this respect, that Clark was entitled to the property, not as an ordinary receiver, but as a quasi-assignee of the dissolved corporation by force of statute entitled of right to defend or sue in its

> stead in this state. (Citation) But the laws of the state of Iowa do not have extraterritorial force. Rights and remedies of property are governed by the laws of the state in which it is situate. The statutory assignment can only be given force in other states on the ground of comity, not by constitutional mandate."

The Montana court says this is a controversy over rights and remedies of property. Petitioner contends this is a controversy over a status traceable to the laws which created the corporation.

The prior decision of this Court (Clark v. Williard), read in the light of the decision there reversed, renders untenable the quoted proposition that rights and remedies of property can be the basis for denying full faith and credit or denying equal protection of the laws. In its first opinion the Montana court, after deciding that petitioner was a chancery receiver, endeavored to settle the controversy conclusively with a statement that even though the Iowa proceedings did vest petitioner with title, " * * such involuntary assignment in aid of a statutory judicial proceeding will not be recognized outside of the jurisdiction of the appointment * * ." (R. 102). The reversal of the first decision indicates that the proposition is not tenable. It should not be said that this Court reversed the former decision merely to permit the Montana court to repeat as a ground of a new decision that which had been an alternative ground of the reversed decision.

Assuming that this is a controversy over rights and remedies of property, no citation of authority is necessary to demonstrate that the control of property is restricted by constitutional mandate. The sovereign right of eminent domain must be exercised agreeably to the due process clause. The sovereign power to regulate nonresident ownership of property is restricted by the equal protection clause.

However, the subject-matter, the ultimate issue herein, is not "rights and remedies of property," but is the status of the charter liquidator of a dissolved insolvent Iowa corporation and the relationship or status as between that defunct entity and its charter successor, on the one hand, and all its creditors, on the other hand. That status or relationship is controlled by the Iowa statutory charter provisions. Of those charter pro-

visions certain truths are evident. They were the organic law of the corporate existence. The corporation had and could have no powers independently or in excess of them. They were carried with the corporation wherever it transacted business. Respondents were put on notice of and acceded to them. The charter provisions and any status or relationship created by them must be recognized and enforced by all other states.

This Court, in Converse v. Hamilton, 224 U. S. 243, 56 L. Ed. 749, considered the proposition that Wisconsin need not enforce a Minnesota statutory stockholder's liability that was contrary to Wisconsin policy. This Court, speaking through Justice Van Devanter, said:

> "The subject to which Chapter 272 (Minnesota statutes) is addressed is peculiarly within the regulatory power of the State of Minnesota; so much so that no other state properly can be said to have any public policy thereon. And what the law of Wisconsin may be respecting the relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and means of enforcing them, is apart from the question under consideration."

Any Montana law or policy is unconstitutional to the extent that it is invoked to deny faith and credit or equal protection to a status which is and can only be traceable to the laws of another state.

There is no reasonable distinction between the reserved sovereign power of Montana to control its courts and the power to control property within its borders. If rights and remedies of property are not subject to constitutional mandate and are permitted to determine the status of petitioner and of the respondents herein, it follows that the Wisconsin court in the Converse case, after rendering judgment in favor of the Minnesota receiver, could have refused to enforce the judgment because it contravened Wisconsin policy as to property. The power of Wisconsin to control its courts was not permitted to override the status of a Minnesota statutory receiver and the relation between him and a stockholder of the defunct Minnesota corporation. By the same token the power of Montana to control property should not be permitted to override the status of petitioner and his relationship to all the creditors of

the defunct Iowa corporation.

Analogy to the marital status is in point. (Atherton v. Atherton, 181 U. S. 155; 45 L. Ed. 794.) Let it be supposed that the Iowa law grants and the Montana law denies to persons within a certain degree of relationship the right to contract a lawful marriage, and that persons within that degree, domiciled in Iowa, are there married. Let it be supposed that the husband dies seized of property in Montana, where the widow's rights are contested on the ground that it is contrary to Montana policy to permit property to pass to one as a widow if she bore to her husband a blood relationship which would have prevented a lawful marriage had the parties been domiciled in Montana. A decision so holding would clearly deny full faith and credit to the laws under which the marital status became fixed and would in effect say that she is a widow in Iowa but not in Montana. Montana property laws might determine the right of a widow in property there located. The question whether an Iowa resident under those circumstances is a widow would not be open to Montana to decide. Montana could not accomplish that result by the subterfuge of applying Montana property laws or policy. The property laws cannot be permitted to deny the existence of a status over which Montana has no control.

Likewise as to statutes and decrees in Iowa dissolving the marital status of persons domiciled in Iowa. An Iowa decree agreeable to Iowa law dissolving the marriage of Iowa citizens must be recognized in Montana even though Montana would not on the same grounds have dissolved a marriage between persons domiciled in Montana. The full faith and credit clause would prevent the courts of Montana from denying that the parties had been divorced. If the divorced husband died owning property in Montana, the survivor should not be permitted to there inherit as a widow. Yet, if the reasoning complained of in the instant case is upheld, the Montana court in the divorce situation would say that the matter being one of rights and remedies of property, the survivor should be permitted to inherit because to do otherwise would be against Montana policy.

Montana may determine the rights of a liquidator to property, but the question whether petitioner is a liquidator is not open. The property laws of Montana can only be enforced

with full recognition that petitioner is a liquidator. The status of petitioner and the relationship between petitioner and the creditors of the defunct Iowa corporation must be determined from the Iowa law and cannot be contravened under the guise of property regulation any more than the marital status of persons domiciled in other states.

The foregoing is not limited by the proposition that Montana would not be compelled to recognize statutes and decrees of other states purporting to fix the marital status of persons domiciled in Montana. (Andrews v. Andrews, 188 U. S. 15; 47 L. Ed. 366.) In the instant case the corporation never became a citizen of Montana. Its admission to Montana did not domesticate it there or change its organic law. In the words of Chief Justice Marshall, the corporation was "precisely what the incorporating act has made it."

Respondents had notice of that incorporating act and are bound by the status created by that act, and cannot successfully invoke the laws of any other state to change or alter that status, which was peculiarly within the power of the incorporating state.

If Montana would not protect a Montana charter liquidator from execution levies, then it might be possible (although we do not so concede) to present a theory on which they could recognize the status of a charter liquidator from another state and still refuse to protect him. Under those circumstances they would be treating alike both domestic and foreign liquidators. However, they admittedly protect a Montana liquidator and refuse to protect a liquidator from another state. In effect they say that in Montana petitioner is not a liquidator. They refuse to give faith and credit to the statutes creating a status over which Montana has no control. They have violated the mandate of this Court. If it be said that Montana has recognized the status, then it has so construed and upheld the constitutionality of statutes as to bring about a discrimination between a Montana liquidator and a liquidator appointed in another state, all in violation of Section 2 of Article IV and Section 1 of Amendment XIV.

The violation of the Constitution and mandate of this Court is not mitigated or avoided by the conclusion that the Iowa courts would do likewise. The Montana court's opinion con-

siders the case of Schloss vs. Metropolitan Surety Co., 149 Iowa 382, 128 N. W. 384, and says (R. 14):

> "If the dissolved corporation were in Montana, and a statutory liquidator appointed in Montana under statutes identical with those of Iowa were making a like claim as against an attaching creditor under like circumstances, the Iowa courts under their established rules of decision would decline to accord the liquidator the right to secure priority over the attaching creditor. We, therefore, conclude that the liquidator from Iowa is entitled to receive no more consideration at the hands of our courts than would our citizens under like circumstances in theirs."

That Schloss case arose on demurrer. It does not appear that the New York statutes were pleaded or that the constitutional questions were ever raised or considered. But if they were, and if the decision goes to the extent claimed for it, nevertheless that case should have been reversed had it been brought here.

This last proposition neither adds to nor detracts from the strength of the Montana decision. The Montana judgment and the opinion either do or do not violate the mandate of this Court and the Constitution. A violation is no less so because some other court would be disposed to do likewise.

The record presents adequate grounds for review. Failure to comply with the mandate of this Court is ground for review. The constitutional questions are in the record. They were specially set up in the trial court (R. 87) or result from an interpretation of Montana statutes the validity and constitutionality of which were considered and upheld and which as interpreted are repugnant to the Constitution.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

Petitioner claims that the Montana Supreme Court erred both in its opinion and in its judgment in several respects, and specifies the following errors:

1. The judgment and opinion failed and refused to obey,

and have ruled and adjudged contrary to, the mandate of this Court.

2. The judgment and opinion deny full faith and credit to the statutes of the State of Iowa which were part of the corporate charter of Federal Surety Company, and to the decrees entered in the State of Iowa agreeably thereto, and therefore violate Section 1, Article IV, of the United States Constitution, in that:

   a. They hold that said statutes and decrees, and the status created pursuant thereto, are not entitled to recognition by constitutional mandate.

   b. They hold that in Montana petitioner is not a charter liquidator entitled to be protected against execution levies.

   c. They fail and refuse to regard the dissolution of Federal Surety Company as effective in Montana and to regard petitioner as successor to said corporation and the holder of title to its property.

3. The judgment and opinion violate Section 2, Article IV, and Section 1, Amendment XIV, of the Constitution of the United States, in that they uphold the constitutionality (which was drawn in question) of Montana statutes interpreted as establishing a policy which prevents recognition and protection against execution levies of a charter liquidator appointed in another state, notwithstanding that the courts of Montana will appoint receivers and liquidators and protect them against execution levies.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the Seal of this Honorable Court, directed to the Supreme Court of the State of Montana, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cause in which said decision and judgment complained of was rendered, designated on its docket as Cause No. 7074, and that said decision and judgment may be reversed by this Honorable Court, and that your petitioner

may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

REUEL B. COOK,
EDMOND M. COOK,
M. S. GUNN,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION

The opinion and judgment of which review is sought were rendered July 24, 1934, and have not been published in the Montana Reports or the Pacific Reporter. See majority opinion, R. 5 to 15. See dissenting opinions, R. 15 and R. 18.

JURISDICTION

Jurisdiction to issue the writ is conferred by Subdivision (b) of Section 237 of the Judicial Code as Amended by Act of February 13, 1925.

The date of the judgment to be reviewed is July 24, 1934 (R. 21).

Issuance of the writ is sought on the ground that the opinion and judgment of the Montana Supreme Court violate the mandate of this Court and violate Sections 1 and 2 of Article IV, and Section 1, Amendment XIV, in the respects noted in the reasons relied upon for the writ, which are, specifically: (1) The holding that in Montana petitioner is not a charter liquidator entitled to protection against execution levies violates the mandate of this Court and denies full faith and credit to the Iowa statutes and decrees. (2) The holding that a charter liquidator appointed in another state is not entitled to protection against execution levies, when domestic receivers and liquidators are appointed and so protected, denies the equal protection of the laws to the foreign liquidator.

STATEMENT OF THE CASE

In the interest of brevity reference is made to the statement of the case set out in the petition to which this brief is attached and the summary thereof inserted at the beginning of the petition.

SPECIFICATION OF ERRORS

Petitioner will rely upon all the assigned errors which are set forth at Pages 12 and 13 of the petition to which this brief is attached, and which, briefly stated, assert that the Mon-

tana court has:

1. Violated the mandate of this Court;
2. Denied full faith and credit to the Iowa statutes and decrees;
3. Denied to this petitioner the equal protection of the laws.

POINTS AND AUTHORITIES RELIED UPON

I. Failure of a court, the decision of which has been reviewed by this Court, to obey the mandate of this Court is ground for a second review.

> In re Blake, 175 U. S. 114; 44 L. Ed. 94.
> Blake v. McClung, 176 U. S. 59; 44 L. Ed. 371.
> Stanley v. Schwalby, 162 U. S. 257, 279; 40 L. Ed. 960, 968.

II. The effect in Iowa of its statutes and decrees is to constitute petitioner a receiver or liquidating officer.

> Clark v. Williard, 78 L. Ed. 743; 54 Sup. Ct. Rep. 615.

III. The statutes of Iowa were the law of the corporate existence and were impliedly acceded to by all who dealt with the corporation.

> Relfe v. Rundle, 103 U. S. 222; 26 L. Ed. 337.
> Mumma v. Potomac Co., 8 Pet. 284; 8 L. Ed. 945.
> Bank of Augusta v. Earle, 13 Pet. 519; 10 L. Ed. 274.

IV. The organic law of the corporation not only governs its existence but is wholly within the legislative power which created the corporation.

> Oklahoma Natural Gas Co. v. Oklahoma, 273 U. S. 257; 71 L. Ed. 634.
> Pendleton v. Russell, 144 U. S. 640; 36 L. Ed. 574.
> Morgan v. New York Nat. Bldg. & Loan Assn., 73 Conn. 151; 46 Atl. 877.

V. Statutory provisions of a corporate charter must be given recognition in states other than that of domicile as a matter of right and not merely by comity.

Converse v. Hamilton, 224 U. S. 243; 56 L. Ed. 749.

Relfe v. Rundle, 103 U. S. 222; 26 L. Ed. 337.

VI. The Iowa statutes must in Montana be given the same effect that they have in Iowa, and that effect cannot be avoided on the ground that to do so is repugnant to Montana policy.

Converse v. Hamilton, 224 U. S. 243; 56 L. Ed. 749.

Hancock National Bank v. Farnum, 176 U. S. 640; 44 L. Ed. 619.

Roche v. McDonald, 275 U. S. 449; 72 L. Ed. 365.

CONCLUSION

Petitioner considers the foregoing points as so clearly established that elaboration thereof would constitute an undue extension of this brief and an imposition upon the Court.

The previous history of this case has finally confined the issue within a narrow compass. Petitioner's status is fixed. This Court has decided that his status is derived from Iowa statutes. The courts of Montana say that petitioner's status, though traceable to Iowa statutes, is not entitled to recognition in Montana. Does the Constitution compel them to say otherwise?

Petitioner believes the principles he relies upon are sound and that the conclusion contended for is not a departure from established authority, but results from the natural extension or application of propositions heretofore decided.

Respectfully submitted,

REUEL B. COOK,

EDMOND M. COOK,

M. S. GUNN,

Counsel for Petitioner.

APPENDIX.

Statutes.

Judicial Code, Section 237, as Amended by Act of February 13, 1925.

(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.

(*b*) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding para-

graph be an obstacle to granting a review on certiorari under this paragraph.

(c) If a writ of error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed: PROVIDED, That where in such a case there appears to be no reasonable ground for granting a petition for certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs, as provided in section 878 of this title.

Section 8402, *Code of Iowa,* 1927 *and* 1931, *Being Also Section* 1640 *of the Code of Iowa,* 1897.

Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the State of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

Section 8964, *Code of Iowa,* 1927 *and* 1931, *Being Also Section* 1731 *of the Code of Iowa,* 1897.

The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in the state, to examine into the affairs and condition of any such company incorporated or doing business therein, or make such examination himself, and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and the result thereof shall be published in one or more papers in the state, when the commissioner believes the public interest requires it. When

it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty per cent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court or judge sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court or judge.

Section 8613-c1, *Code of Iowa,* 1931, *Being Chapter* 233 *of the Acts of the* 43*rd General Assembly of Iowa.*

The commissioner of insurance henceforth shall be the receiver and or liquidating officer for any insurance company, association or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership.

Section 6011, *Revised Codes of Montana,* 1921.

6011. Directors to be trustees for creditors upon dissolution of corporation—Dissolution by limitation—Record of names of trustees. Unless other persons are appointed by the court, the directors of any corporation, at the time of its dissolution by expiration of its charter or otherwise, are trustees of the creditors and stockholders or members of such corporation, and have full power to settle and liquidate its affairs, and such trustees, or a majority thereof, or in case

of the death of one or more of such trustees, a majority of such survivors, are authorized to execute grants and conveyances of both real and personal property of such dissolved corporation. Every such grant or conveyance shall be prima facie evidence of the truth of all matters and facts recited or stated therein.

Where a corporation is dissolved by the expiration of the time limited by its charter, the president, or vice-president, and the secretary of the corporation in office at the date of its dissolution, may at any time thereafter make out, under oath, a statement giving the names of directors of the company at time of such dissolution, which statement shall be entitled to record in the office of the county clerk and recorder of any county of the state of Montana, and the directors therein named shall be, prima facie, the trustees of such dissolved corporation.

Section 9256, *Revised Codes of Montana*, 1921.

9256. When attachment may issue. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, as follows:

In an action upon a contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

Section 9301, *Revised Codes of Montana*, 1921.

9301. Appointment of receiver. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the

property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Section 9303, *Revised Codes of Montana,* 1921.

9303. Appointment of receivers upon dissolution of corporations. Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.